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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISCELLANEOUS PETITION NO.56 /2007

Applicants Petitioners	Mr. V. Sridharan & 9 others
Vs.	
Non-applicants Respondents	Mr. Ramesh Kumar Ahuja & another.

POST FOR ORDER ON 24/9/2007

Sd/-
DHIRENDRA MISHRA
Judge

21.9.2007

(191)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISCELLANEOUS PETITION NO.56 /2007

Applicants Petitioners	1.	Mr. V. Sridharan S/o Mr. S. Venkat Raman aged about 56 years, ex-Chairman, Durg Rajnandgaon Gramin Bank, Head Office, Rajnandgaon and presently Regional Manager, Dena Bank, Mehsana Regional Office, Mehsana, Gujrat.
	2.	Mr. A.C. Verma, S/O Mr. R.R. Verma, aged about 50 years, Branch Manager, Durg Rajnandgaon, Gramin Bank, Branch Deokar,District Durg.
	3.	Mr. Amod Shrivastava, S/O Mr. B.L. Shrivastava, aged about 48 years, Branch Manager, Durg Rajnandgaon, Gramin Bank, Branch Rajnandgaon, District Rajnandgaon.
	4.	Mr. Gautam Chand Jain, S/o Mr. P.R. Jain aged about 47 years, Senior Manager, Personnel Department, Durg Rajnandgaon, Gramin Bank, Head Office, Near Mundra Kunj, Rajnandgaon.
	5.	Mr. R.C. Baraiha, S/o Mr. H.R. Baraiha aged about 47 years, Officer, Durg Rajnandgaon, Gramin Bank, Branch Chandkhuri, District Durg.
	6.	Mr. Rajesh Kumar Gupta, S/o Late Mr. Laxminarayan Gupta, aged about 56, Senior Manager, Chairman's Secretariat, Head Office Durg Rajnandgaon Gramin Bank, Near Mundra Kunj, Rajnandgaon (CG).
	7.	Mr. K.K. Dwivedi, S/O Mr. B.P. Dwivedi aged about 47 years, Branch Manager, Durg Rajnandgaon Gramin Bank,SAF, Line, District Durg.
	8.	Mr. M.P. Singh Bannoana, S/o Mr. Sardar Keshar Singh aged about 44 years, Senior Manager, Durg Rajnandgaon Grmain Bank, Head Office,

		Rajnandgaon (CG)
	9.	Mr. Pradeep P. Toley, S/O Mr. P.K. Toley, aged about 48 years Branch Manager, Durg Rajnandgaon Gramin Bank, Branch Dhamdha, District Durg.
	10.	Mr. A.K. Samant, S/O. Mr. N.C. Samant aged about 41 years, Clerk-cum-Cashier, Durg Rajnandgaon Gramin Bank, Branch Sikosa, District Durg.
	Vs.	
Non-applicants Respondents	1.	Mr. Ramesh Kumar Ahuja, S/O Mr. Sajan Das Ahuja, aged about 48 years Resident of Street No. 3, House No. 37, Deepak Nagar, Durg (CG), Officer Durg Rajnandgaon Gramin Bank, Branch Anjora, Post Anjora, District Durg.
	2.	State of Chhattisgarh, through S.H.O. Police Station Khairagarh, District Rajnandgaon.

Present:

Mr. P. Diwakar, Sr.Advocate with Mr. P.S. Koshy, Advocate for the petitioners.
Mr. S.C. Verma, Advocate for the respondent No.1/complainant.
Mr. G.K. Beriwal, Dy. A.G. for the State/respondent No. 2.

O R D E R
(Passed on 24/09/2007)

Dhirendra Mishra, J

The petitioners by this petition under Section 482 of the Code of Criminal Procedure (for brevity 'the Code') have prayed for quashing of the criminal complaint filed by the respondent No.1/complainat in the Court of Additional Chief Judicial Magistrate, Khairagarh, to set aside the order dated 16.1.2007 of Annexure P/10 passed in criminal revision No. 27/06 by learned Additional Sessions Judge, Khairagarh and further to set aside the order dated 27.1.2007 of Annexure P/11 passed by learned A.C.J.M. in pursuance of the order of Annexure P/10, whereby the Police Station Khairagarh has been directed to investigate the offence after registering First Information Report.

2. Respondent No. 1 Ramesh Kumar Ahuja-the complainant, has also filed an application under Section 482 of the Code in this proceeding and prayed for direction for free and fair investigation on his complaint against the petitioners.

3. The complaint has been filed by respondent No. 1 against the petitioners under Sections 166, 167, 420, 418, 468, 469, 471, 192, 193, 196, 211/34 of the Indian Penal Code with the allegations that the complainant was posted as Branch Manager, Branch Jalbandha of Durg-Rajnandgaon Rural Bank from 16.11.1998 to 24.2.2001. He was transferred in January 2001. He filed a writ petition before the High Court and thereafter proceeded on leave on 19.1.2001 after handing over the charge and keys of the bank, for his treatment. He was relieved from the charge on 24.2.2001 in his absence and 2 ½ years thereafter on the basis of forged and fabricated documents a departmental enquiry was conducted by the petitioners, witnesses were examined at the departmental proceedings and further to tarnish his image public notice was published in the daily newspapers. After his transfer certain documents pertaining to loan cases were removed from the bank by the Branch Manager and allegations were made against the complainant that certain documents are not available in the record. It is also alleged that he did not mention the name of introducers at the time of opening accounts of some borrowers and keys of the almirahs were not handed over by him while proceeding on leave and when the almirahs were inspected after breaking open the locks, certain documents, ledgers were found missing. From perusal of the documents provided by the management subsequently it is prima facie established that with an intention to frame charge, original documents have been fabricated in conspiracy by all the accused persons. Even the fabrication has been done in the key register. False Panchnama regarding contents of almirah was prepared showing that it was prepared after breaking open the locks. Thus, on the basis of fabricated and forged documents false charges were framed against him. The above facts were brought to the notice of appellate authority by the complainant, however, the appellate authority justified the illegal and unconstitutional act of the investigating officer and also justified the criminal act, which amounts to abetment of the offence committed by the other persons and further confirmed the conspiracy and common intention of the accused persons. The complainant reported the matter to the Police Station

Khairagarh with a copy of the same to the Superintendent of Police Rajnandgaon. However, no action was taken against the accused persons and in these circumstances, the present complaint has been filed.

4. The statement of the complainant was recorded on 29.11.2006 by the trial Court. Thereafter, an application under Section 156(3) of the Code was filed by the complainant on 7.11.2006. The learned Magistrate vide order dated 13.11.2006 rejected the above application with an observation that evidence of the offence mentioned in the complaint can be collected by the complainant and adduced in evidence or the documents may be requisitioned by summoning the same from the concerned bank and therefore, direction to the police to register First Information Report and conduct investigation thereafter, does not appear to be necessary.

5. The complainant preferred criminal revision against the above order and the learned Additional Sessions Judge allowed the revision with an observation that majority of the offences in the complaint are cognizable and serious offences and only requisitioning the documents pertaining to departmental enquiry through summons as evidence is not enough as the said forged documents are required to be examined by the experts for proving the offence and the trial Court was directed to get the allegations made in the complaint investigated through police. The Trial Court vide order of Annexure P/11 forwarded the complaint to the S.H.O. Khairagarh, Distt. Rajnandgaon with a direction to register First Information Report and conduct investigation.

6. Learned counsel for the petitioners submits that the petitioner No. 1 was posted on deputation as the Chairman and Disciplinary Authority of the Durg – Rajnandgaon Rural Bank from 27.11.2003 to 27.9.2005, No. 2 was the Enquiry Officer to conduct disciplinary enquiry against the complainant, No. 3 was Presenting Officer in the above departmental enquiry, No. 4 is presently working as Sr. Manager who had attested certain official documents of the bank produced in the enquiry and No. 5 was the Branch Manager of Jalbandha Branch and a witness in the said departmental enquiry. No. 6 to 9 were also witnesses in the said enquiry proceedings and petitioner No. 10 is working as Clerk-cum-Cashier and was also a witness in the

departmental enquiry initiated against the complainant. Respondent No.1/complainant is Scale-I officer in the bank and is presently posted at Anjora Branch. The complainant after his transfer did not comply with the order of transfer and went on unauthorized leave without handing over the charge of the Branch or keys pertaining to the Branch despite repeated requests, compelling the petitioners to break open the locks of almirahs. A departmental enquiry was initiated for the above misconduct and explanation was sought from him. In the audit of Jalbandha Branch of the Bank, certain documents were found missing whereupon explanation was called from him for missing of those documents and ultimately a charge sheet of Annexure P/1 was issued against him. The charge sheet was challenged by the complainant by way of filing writ petition bearing No. 1115/04, which is pending before this Court. The bank being unsatisfied with the reply to the charge sheet decided to hold departmental enquiry. After conclusion of the enquiry charges leveled against him were found to be proved. The disciplinary authority on the basis of report of the enquiry officer, imposed punishment on the respondent No.1/complainant vide Annexure P/2. The complainant has already preferred an appeal before the appellate authority against his punishment vide Annexure P/3, which is still pending. However, respondent No.1/complainant malafidely with an intention to create undue pressure upon the officer of Durg-Rajnandgaon Rural Bank filed a criminal complaint under Section 500/34 of the Code before the J.M.F.C., Rajnandgaon vide complaint of Annexure P/4. He has also instituted a civil suit vide Annexure P/5 for damages. Thereafter, the complaint of Annexure P/6 has been filed and application under Section 156(3) of the Code of Annexure P/7, have been preferred in the above complaint.

7. Learned counsel for the petitioners further submitted that there is no specific allegation in the complaint against the petitioners. The allegations present in the complaint even if accepted in its entirety, do not make out the offence alleged in the complaint against any of the petitioners. The allegations contained in the complaint pertain to acts of omission and commission allegedly committed during departmental enquiry, in which the complainant stands punished and his departmental appeal is still pending before the appellate authority. The complaint preferred by him, on the face of it, is frivolous and issuance of direction to the police to register FIR on the basis of above complaint

and investigate the matter amounts to abuse of process of law, which shall ultimately result in harassment to the petitioners. It is argued that the order of Annexure P/10 was passed against the petitioners even without affording them an opportunity of hearing.

8. Reliance is placed on the decisions in the matters of *State of Haryana and others Vs. Bhajan Lal and others*[1], *Vijaya Rao Vs. State of Rajasthan and another*[2] and *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Sharaful Haque and another*[3].

9. On the other hand, learned counsel for the respondent No.1/complainant referring to the allegation in the complaint and documents annexed with it submitted that looking to the complaint and statement of the complainant under Section 200 of the Code, a prima facie case of conspiracy with an intention to frame a false charge against the complainant on the basis of forged and fabricated documents is made out. Since the documents are in possession of the petitioners, it was not possible for the complainant to collect evidence in support of his complaint and in these circumstances, he moved an application for investigation by the police agencies. However, the same was rejected and thereafter, the learned revisional Court has rightly allowed the criminal revision directing the trial Court to forward the complaint to the concerned police station for conducting investigation and submitting report. In compliance thereof, the police has been directed to register the FIR and conducted investigation, which is strictly in accordance with law.

10. It was further argued that since the complainant was not issued any summons by the trial Court and the application under Section 156(3) of the Code was rejected in his absence, therefore, in revision preferred by the complainant against the order of rejection, it was not necessary for the revisional Court to afford an opportunity of hearing to the petitioners.

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1. 1992 Suppl. (1) SCC 335
2. (2005) 7 SCC 69
3. (2005) 1 SCC 122

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11. Learned counsel for the respondent No.1/claimanant placed reliance in the matters of *Mustaq Ahmad Vs. Mohd. Habibur Rehman Faizi and others*[4], *State of Bihar Vs Raj Narayan Singh*[5], *State of Tamil Nadu Vs. Thirukkural Perumal*[6], *M/s Ranbaxy Laboratories Limited Vs. State of Madhya Pradesh*[7], *Suresh Chandra Jain Vs. State of Madhya Pradesh and another*[8], *The Janta Dal Vs. H.S. Choudhary and others*[9], *Union of India and others Vs. B. R. Bajaj and others*[10] and *Maninder Kaur Vs. Rajinder Singh and others*[11].

12. I have heard learned counsel for the parties and have gone through the complaint as also the orders passed by Courts below.

13. Sub-section 3 of Section 156 of the Code confers powers and gives discretion to the Magistrate to forward complaint to the police with a direction to investigate the matter. However, this power is not to be exercised mechanically. When the complainant approaches the Court making a grievance disclosing cognizable offence, it is the duty of every Court in the first instance to carefully examine the complaint and find out whether it prima facie discloses the offence worthy of issuing the process, in the second instance, whether the allegations in the complaint are such which involve quite complex and complicated investigation of the case, which without the active and expertise assistance of the police cannot be undertaken and only after recording such satisfaction notice along with a copy of the complaint to the concerned police station should be served for investigation.

14. In *Bhajan Lal and others*[1] in paragraph 102 of the judgment the Hon'ble Supreme Court while dealing with exercise of extraordinary powers under Article 226 of Constitution of India or inherent powers under 482 of the Code has given some categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice.

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4. AIR 1996 SC 2982
5. 1992 Manisha 55 S.C.
6. 1995(I) MPWN 224 S.C.
7. 1996 Cr.L.R. (MP) 29
8. AIR 2001 SC 571
9. AIR 1993 SC 892
10. AIR 1994 SC 1256
11. 1992 Suppl. (2) SCC 25

15. Learned counsel for the petitioners pointing out towards the above guidelines argued that even if allegations contained in the complaint are accepted in its entirety, the same does not prima facie constitute any offence or make out the case against the accused. The allegations present in the complaint are so absurd and improbable that the Court below ought to have dropped the complaint at the threshold as the same has been made with a malafide intention with an ulterior motive for wreaking vengeance on the accused persons who are responsible officers of the bank and they conducted enquiry against the complainant while discharging their duties as such officer of the bank.

16. In *Vijaya Rao*[2] also the Hon'ble Supreme Court considering the fact that ingredients constituting an offence under Sections 420 and 409 of IPC are conspicuously lacking in the complaint, quashed the proceedings against the accused with an observation that continuance of the same would result in abuse of process of the Court.

17. In the matter of *Zandu Pharmaceutical Works Ltd*[3] the Hon'ble Supreme Court observing that the complaint did not go to the Court with clean hands as he did not approach for a long period and did not offer any explanation for his inaction, referring to the guiding principles of law laid down in *Bhajan Lal and others*[1], quashed the proceedings initiated by the complaint.

18. In the matters of *Mustaq Ahmad*[4], *M/s Ranbaxy Laboratories Limited*[7], *The Janta Dal*[9], *B. R. Bajaj and others*[10] and *Maninder Kaur*[11], it has been held that in a petition under Section 482 of the Code for quashing the FIR or complaint, only allegations in the complaint and evidence adduced by the complainant is to be seen and it is to be considered whether the same discloses prima facie evidence of commission of offence against the accused persons or not. The powers, however, though unrestricted and undefined, should not be capriciously or arbitrarily exercised to stifle a legitimate prosecution but exercised *ex debito justitiae* to prevent abuse of process of court.

19. In *Raj Narayan Singh*[5] case also it has been held that minor contradictions in the statements of witnesses recorded during investigation and First Information Report cannot be a ground to quash the proceedings at the initial stage without affording opportunity to lead evidence to the complainant.

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20. The trial Court vide order dated 13.11.2006 rejected the application under Section 156(3) of the Code preferred by the complainant after considering nature of allegations present therein and statement of the complainant recorded under Section 200 of the Code with an observation that allegations pertains to the documents produced by the petitioners and the complainant is free to adduce evidence by collecting evidence, producing the same in Court or by summoning the same from the concerned bank and therefore, there appears no necessity for directing the police to conduct investigation after registering First Information Report and fixed the matter for evidence before registration. Learned Additional Session Judge by the impugned order, relying upon the judgment in the matter of *Suresh Chandra Jain*[8] has allowed the criminal revision holding that from perusal of the complaint it appears that there are allegations against the accused persons, majority of which pertain to cognizable offences of serious nature, the complainant has argued that summoning the documents pertaining to departmental enquiry as evidence alone would not prove the charges unless the documents are examined by the experts and therefore, it appears to be just and proper to direct the trial Court to get the matter investigated from the police agency with respect to the complaint filed by the complainant.

21. In the matter of *Suresh Chandra Jain*[8] the complainant filed a complaint against the accused persons under Section 3 of the Prizes Chits and Money Circulation Scheme (Prohibition) Act and Section 420 of the IPC. The Chief Judicial Magistrate forwarded the complaint to the police station for investigation under Section 156(3) of the Code with a direction to register FIR and initiate investigation. The said order was challenged by way of criminal revision before the Sessions Judge and after dismissal of revision, he moved High Court under Section 482 of the Code. The High Court rejected the petition with an observation that in a private complaint case under Section 156(3) of the Code the Magistrate is empowered to order investigation, the allegations made in the complaint needs to be investigated in public interest. Thereafter, the accused persons preferred SLP, which was also dismissed and the Hon'ble Supreme Court in paragraph 10 of its judgment held as under:

> "10. The position is thus clear. Any judicial Magistrate, before, taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath

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> because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

22. In the above judgment, Hon'ble the Supreme Court referring to the judgment in the matter of *Gopal Das Sindhi and others vs. State of Assam and another*[12] has held that where the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of filing of the complaint and in appropriate cases the complaint disclosing cognizable offence may be sent to the police for investigation under Section 156(3) of the Code by the Magistrate without taking cognizance. However, the position has been made absolutely clear that there may be occasions when the Magistrate may exercise its discretion and take cognizance of the offence.

23. In the instant case, after filing of the complaint the Magistrate has already recorded statement of the complainant under Section 200 of the Code and thereafter, an application under Section 156(3) of the Code was filed by the complainant. The Judicial Magistrate after considering nature of allegations present in the complaint, rejected the above application and directed him to produce further evidence in support of the complaint. In this context, this Court is of the considered opinion that the Magistrate after applying his mind and after going through the allegations present in the complaint considering the over all facts of the case, declined to issue any direction to the police for registration of the offence and investigation at that stage and rightly exercised his discretion of taking cognizance of the offence, as such, there was no occasion for the revisional Court to interfere with the reasoned order passed by the Judicial Magistrate and allow the revision with a direction to the Magistrate to refer the complaint to the police for registering an FIR and investigating the matter thereafter.

12. AIR 1961 SCC 986

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24. However, so far as prayer of the petitioners that the complaint filed by the complainant before the Magistrate should have been dismissed at the threshold, is concerned, in view of settled law in this regard that while exercising powers under Section 482 of the Code for quashing criminal proceedings in a complaint case or for quashing an FIR only allegations present in the complaint, statements of witnesses recorded and documents annexed with the complaint, are to be seen, the complaint is at the stage of recording of evidence before registration before the Judicial Magistrate, therefore, it could not be quashed at this stage. Similarly, since the matter is fixed for evidence of the complainant before registration before the Magistrate, there is no ground to hand over the present matter for fresh investigation by an independent agency as prayed by the respondent and his application under Section 482 of the Code for the above purpose is also rejected.

25. In the result, the petition is allowed. Impugned order dated 16.1.2007 of Annexure P/10 passed by Additional Sessions Judge, Khairagarh is set aside. Consequently, the order dated 27.1.2007 of Annexure P/11 passed by A.C.J.M. Khairagarh is also set aside. However, order of Judicial Magistrate dated 13.11.2006 rejecting the application under Section 156(3) of the Code is upheld and proceedings before the Magistrate shall go on in accordance with order dated 6.1.2007 of the A.C.J.M.

Sd/-
DHIRENDRA MISHRA
Judge